



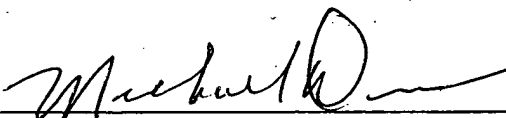
RPP:135F US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Molly F. Kulesz-Martin
Serial No: 08/811,361
Filed: March 4, 1997
Examiner: Yaen, C. H.
For: p53as PROTEIN AND
ANTIBODY THEREFOR

Art Unit: 1642

I certify that this Request is being deposited on, October 8, 2002
with the U.S. Postal Service as first class mail addressed to
Commissioner of Patents and Trademarks, Washington, D.C. 20231


Michael L. Dunn

Registration No. 25,330

REQUEST FOR RECONSIDERATION

RECEIVED

OCT 17 2002

The Assistant Commissioner for Patents
Washington, D.C. 20231

TECH CENTER 1600/2900

Sir:

Responsive to the official action of July 30, 2002, the Examiner is requested to reconsider the rejections and allow all claims.

The Examiner has rejected Claim 11 under 35 U.S.C. 101 for lack of utility. This rejection should be withdrawn. The claim is clearly drawn to a peptide that distinguishes p53as protein from p53 protein. The functions of p53 protein have been well studied and many of those functions are known in the art. Further there has been a correlation established between p53 function and tumor activity. It is therefore clearly important, as discussed in art of record, to determine when p53 is functional. In accordance with the present invention it has been determined that there is an "always functional" form of p53 known as p53as. For reasons described above, it is important to distinguish functional forms of p53 from non functional

forms. The claim is for a peptide that permits p53 to be distinguished from p53as. The utility of the present invention is therefore clear. The Examiner's statement that there is no teaching of what the peptide is or how it functions is clearly inaccurate and is simply another way of stating a position that has already been overturned by the Board of Patent Appeals and Interferences. The peptide is clearly a unique carboxy terminal region of p53as that distinguishes p53as protein from p53 protein and the specification clearly teaches development of specific antibodies to the claimed peptide. This alone is sufficient to identify the peptide but in addition further identifying features are clearly set forth in the specification, e.g. at page 21. All of the Examiner's references to "possible" errors that can arise from using data bases is irrelevant. The peptide is defined as being identical to the unique carboxy terminal region of p53as that distinguishes p53as from p53 which in the specification has been defined as being in the final 50 amino acids. This has been accepted by the Board as being sufficient for enablement. The Examiner is thus revisiting issues already decided by the Board.

Further, regardless of any possible error in sequence identification in publications and data bases, the sequences for p53 and p53as until the carboxy terminal region are defined as identical. In addition, in the Bork et al reference cited by the Examiner, in the case of homology and functional features by homology, (the present case), accuracy is 98 and 90 percent respectively (see table). At those numbers, there would be a strong presumption of accuracy and the Examiner would need to cite art showing that the present claim is in fact inaccurate.

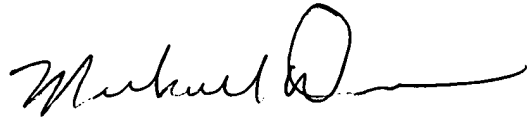
Claim 11 has been rejected under 35 U.S.C. 112 first paragraph for lack of utility as stated above. This rejection should be withdrawn for the same reasons given above.

The rejections should be withdrawn and the application should be allowed.

In view of the foregoing, is asserted that all objections and rejections have been overcome and all claims are in condition for allowance, which action is courteously requested.

Respectfully submitted,

Dated: October 8, 2002

A handwritten signature in black ink, appearing to read "Michael L. Dunn", with a long horizontal flourish extending to the right.

Michael L. Dunn

Attorney for Applicant(s)

Reg. No. 25,330

P.O. Box 10

Newfane, New York 14108

Telephone: (716) 433-1661

MLD/cah

OCT 5 2002
PATENT & TRADEMARK OFFICE

164

PTO/SB/21 (08-00)


Approved for use through 10/31/2002. OMB 0651-0031

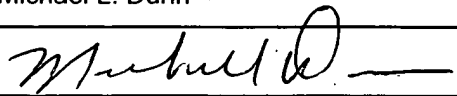
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	08/811,361	
	Filing Date	03/04/1997	
	First Named Inventor	Molly F. Kulesz-Martin	
	Group Art Unit	1642	
	Examiner Name	C. Yaen	
Total Number of Pages in This Submission	5	Attorney Docket Number	RPP:135F US

ENCLOSURES (check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers (for an Application) <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks		RECEIVED OCT 17 2002 TECH CENTER 1600/2900

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	Dunn & Associates
Signature	
Date	Oct. 8, 2002

CERTIFICATE OF MAILING			
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date: 10/8/02			
Typed or printed name	Michael L. Dunn		
Signature		Date	Oct 8, 2002

Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. 1. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

BEST AVAILABLE COPY